IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3337 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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C M SATHWARA - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/06/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged an order dated 5-3-2004 by which the Government had taken a decision to prematurely

retire the petitioner from service. The order was passed in exercise of powers under rule 10(4) of the Gujarat Civil Services (Pension) Rules , 2002.

2. It is not in dispute that petitioner was discharging duties on Class-I post as an Assistant Commissioner of Sales Tax. The petitioner was appointed as Sales Tax Officer (Class-II) in the year 1975 and thereafter, promoted as Sales Tax Officer (Class-I) in the year 1984. He was discharging his duties as Assistant Commissioner of Sales Tax since 16-5-1989. Under ordinary course, he would have superannuated in May 2009. However, finding that service record of the petitioner was not very bright, the Government considering the over all service record, upon the petitioner crossing age of 50 years, in exercise of powers under rule 10(4) of Gujarat Civil Service Pension Rules decided to prematurely retire the petitioner. Along with order dated 5-3-2004, notice pay of three months was also offered to the petitioner

and he was made to retire with effect from 6-3-2004.

3. The petitioner has therefore, challenged the said order in the present petition on various grounds. It is contended on behalf of the petitioner that decision of the Government was not fair, same was arbitrary and unreasonable. It is contended that service record of the petitioner did not warrant such an action by the Government. It is further contended that proper procedure as laid down in various circulars was not followed before the Competent Authority decided to exercise power to prematurely retire the petitioner. In this regard reliance was placed on Government Resolution dated 28-7-1987 wherein Government has laid down guidelines for taking into review the case of those officers who crossed 50 or 55 years of age or have completed sufficient number of years of service, permitting the Government to take their service into review for further continuation in service as per rule 161 of B.C.S.R. In particular

reliance was placed on the requirement of the Review Committee to consider the service record of the officer and to record its reasons for the conclusions. It was stated that such procedural requirement was not followed. In this regard, reliance was placed on the decision of learned Single Judge of this Court in the case of Girdharsinh Ramsinh Parmar v/s. Deputy Inspector General of Police reported in 1988(2) GLR 1095, wherein learned Judge found that though the Government has power to prematurely retire an employee, the guidelines contained in various circulars which incorporate rules of natural justice must be strictly adhered to.

4. On the other hand, Government has opposed the petition through filing of the reply as well as submissions made by learned AGP before the Court. It is stated in the affidavit in reply that procedure as laid down in different Government Resolutions have been followed. The Review Committee considered the service record of the petitioner and recommended his

discontinuation. It was pointed out that Committee had an occasion to consider various adverse remarks in the service record of the petitioner for the period between 12-1-1991 to 31-3-1992, 5-6-1992 to 31-3-1993, 21-6-1996 to 31-3-1997 as also for the year 1997-1998. Reliance was also placed on various decisions of Hon'ble Supreme Court suggesting that it is the subjective satisfaction of the State Government and as long as decision is based on material on record, this Court would not act as an Appellate Authority over such a decision.

5. Besides hearing learned advocate for the parties, I have also perused the original service record made available to the Court by the learned AGP. I find that there were several adverse remarks against the petitioner of fairly serious nature. Some of these adverse remarks are also placed on record. It may be noted that as recently in the year 1996-1997, the Reporting and Review Authority found that petitioner completely lacks initiative and courage to take

responsibilities. Remarks also find that he lacks ability to take quick and matured decisions. It was found that he does not use his power and authority. He had to be continuously reminded about not being able to achieve targets and quality of output of his work. His overall performance was found to be completely lacking in devotion to duty and sincerity, despite being a senior officer of Class-I position. This and many other comments would establish that the service record of the petitioner in later portion of his carrier was not of high caliber. It is not the case of an isolated individual adverse remark here or there, which can be ignored in face of other-wise a glorious service carrier. However, it is a case where I find large number of serious nature of adverse remarks sprinkled over the later portion of the petitioner's service carrier coupled with virtually no remarks categorising him as an outstanding officer. If on the basis of the above material, the Government formed an opinion that retention of the petitioner in Government

service is not desirable once having crossed age of 50 years, such an opinion cannot be said to be wholly arbitrary or perverse so as to call for interference by this Court. The Government formed such an opinion on the basis of recommendations of High Power Committee which had gone into details of service record of the petitioner. The petitioner as Class-I Officer should hold a greater degree of care, competence and dedication to the service. If the Government found that he completely lacked sincerity or interest in service and therefore, had reached a stage of being deadwood, it was open for the Government to exercise powers under statutory rules and prematurely retire the petitioner. I find no illegality in this order. Law of premature retirement is well settled by series of decision of Hon'ble Supreme Court. It is by now well settled that order of premature retirement does not involve element of penal nature requiring following principles of natural justice. For the said purpose, reliance may be made to the decision of Hon'ble Supreme Court in

the case of Union of India v/s. V.P. Seth and another reported in AIR 1994 Supreme Court 1261. In the same decision and many other decision, it is also held that even un-communicated remarks can be looked into to permit the Government to form an opinion in this regard.

6. Reliance placed by the learned advocate for the petitioner on the decision of this Court Girdharsinh Ramsinh Parmar v/s. Deputy Inspector General of Police can be of no avail. The Committee had as is borne out from affidavit in reply taken into consideration all aspects of the matter and I do not see any breach of mandatory requirement of the provisions which would vitiate the order.

7. In the result, petition fails, is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)